



yellow page ads. On four advertising contracts executed in 2008 and 2009, Tracy's signature appears above the line marked, "Customer Signature," and next to lines with typewritten text, "Steve and Nancy Tracy," "OWNER." The summary order pages of the contracts list the same customer identification number and there is reference on three contracts under the identification number to "Brinks, Home Security." On the fourth contract the reference to Brinks Home Security is crossed-out and "Broadview Security," is handwritten in its place. After a trial to the court, the circuit court found that Universal Telecom does not appear anywhere in the contracts. It found that Ameritech was aware of the existence of an entity called Universal Telecom but that Tracy was ambiguous as to the business he was marketing. It concluded that the customer identification number was associated with Tracy, doing business as Brinks Security System, Net Results, and Broadview Security. For these reasons, the court concluded that Tracy was responsible for the amounts owed under the contracts.

[W]here an agent merely contracts on behalf of a disclosed principal, the agent does not become personally liable to the other contracting party. Under common law agency principles, however, an agent will be considered a party to the contract and held liable for its breach where the principal is only partially disclosed. A principal is considered partially disclosed where, at the time of contracting, the other party has notice that the agent is acting for a principal but has no notice of the principal's corporate or other business organization identity.

*Benjamin Plumbing, Inc. v. Barnes*, 162 Wis.2d 837, 848-49, 470 N.W.2d 888 (1991) (citations omitted). The above rule recognizes that it can make considerable difference to a contracting party whether or not a corporation is on the other side of the bargaining table. *Id.* at 850.

It was Tracy's burden to prove that Ameritech knew that he was acting on behalf of Universal Telecom. *Id.* at 851. The inquiry is whether, at or prior to the execution of the

contract, the contracting party knows, has reason to know, should have known, or was given notice of the identity of the principal. *Id.* at 852. Whether there is sufficient notice of the principal's corporate identity is a question of fact. *Id.* The circuit court's findings of fact must be upheld unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). When the circuit court acts as the finder of fact and conflicting evidence exists, it is the judge who acts as the ultimate arbiter of the credibility of the witnesses. *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983). When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the circuit court. *Id.*

When asked if he had notified Ameritech of the existence and identity of Universal Telecom, Tracy answered he had done so in conversations with the ad salesman, by payment with checks with Universal Telecom's name on them, and by providing the federal tax payer identification number of Universal Telecom and signing a document as "president" to process a settlement regarding a 2006 dispute over the failure to provide promised call tracking. The circuit court found that the payments made with Universal Telecom checks and payment of settlement money to Universal Telecom did not apprise Ameritech that it was supplying services to Universal Telecom. The court recognized that often third parties pay the obligations of others and that it was logical to return money paid by Universal Telecom to it in settlement of the dispute. Other than Tracy's single assertion that he had told the salesman that Universal Telecom was the contracting entity, there was no evidence about conversations with the salesman. Because the circuit court did not find that Ameritech had been directly informed that the advertising contracts were the responsibility of the corporate entity Universal Telecom, it implicitly rejected Tracy's testimony that he had told the salesman that Universal Telecom was the contracting entity. *See Hintz v. Olinger*, 142 Wis. 2d 144, 149, 418 N.W.2d 1 (Ct. App.

1987) (when a trial court fails to make express findings of fact, we may assume that a missing finding was determined in favor of the judgment).

Having made credibility findings against Tracy regarding his claim that he verbally disclosed his principal to Ameritech and that payment and settlement documents were probative on the disclosure issue, the circuit court turned to the contracts themselves. The circuit court's finding that Tracy was ambiguous about what business he was marketing is not clearly erroneous in light of the different trade names used in the contracts and advertisements. Additionally, Tracy had signed next to the owner designation and as the circuit court noted, had not availed himself of the opportunity to otherwise designate his status as a corporate agent or president. Although the circuit court found that Ameritech was aware of an entity called Universal Telecom, the contracts never mentioned it. There must be more than a mere suspicion that a corporate principal exists. *Benjamin Plumbing*, 162 Wis. 2d at 852. Tracy did no more than prove that Ameritech had reason to suspect Tracy was an agent for Universal Telecom. Having failed to sustain his burden of proof, the circuit court's finding that the corporate principal was not adequately disclosed is not clearly erroneous.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*